



General Assembly

Bill No. 32

February Session, 2008

LCO No. 700

00700_____

Referred to Committee on Human Services

Introduced by:

SEN. MCKINNEY, 28th Dist.

REP. CAFERO, 142nd Dist.

AN ACT CONCERNING THE FINANCIAL CONDITION OF NURSING HOMES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 17b-352 of the 2008 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective from passage*):

4 (a) For the purposes of this section and section 17b-353 of the 2008
5 supplement to the general statutes, "facility" means a residential
6 facility for the mentally retarded licensed pursuant to section 17a-277
7 of the 2008 supplement to the general statutes and certified to
8 participate in the Title XIX Medicaid program as an intermediate care
9 facility for the mentally retarded, a nursing home, rest home or
10 residential care home, as defined in section 19a-490 of the 2008
11 supplement to the general statutes.

12 (b) Any facility [which] that intends to (1) transfer all or part of its
13 ownership or control; [prior to being initially licensed;] (2) introduce

14 any additional function or service into its program of care or expand
 15 an existing function or service; or (3) terminate a service or decrease
 16 substantially its total bed capacity, shall submit a complete request for
 17 permission to implement such transfer, addition, expansion, increase,
 18 termination or decrease with such information as the department
 19 requires to the Department of Social Services, provided no permission
 20 or request for permission to close a facility is required when a facility
 21 in receivership is closed by order of the Superior Court pursuant to
 22 section 19a-545 of the 2008 supplement to the general statutes. The
 23 Office of the Long-Term Care Ombudsman pursuant to section 17b-400
 24 shall be notified by the facility of any proposed actions pursuant to this
 25 subsection at the same time the request for permission is submitted to
 26 the department and when a facility in receivership is closed by order of
 27 the Superior Court pursuant to section 19a-545 of the 2008 supplement
 28 to the general statutes.

29 (c) An applicant, prior to submitting a certificate of need
 30 application, shall request, in writing, application forms and
 31 instructions from the department. The request shall include [:(1) The]
 32 the name of the applicant or applicants [; (2)] and a statement
 33 indicating whether the application is for [(A)] (1) a transfer of
 34 ownership or control, (2) a new, additional, expanded or replacement
 35 facility, service or function, [(B)] (3) a termination or reduction in a
 36 presently authorized service or bed capacity, or [(C)] (4) any new,
 37 additional or terminated beds and their type. [; (3)] Applications, other
 38 than those seeking transfer of ownership or control, shall include (A)
 39 the estimated capital cost; [(4)] (B) the town where the project is or will
 40 be located; and [(5)] (C) a brief description of the proposed project.
 41 Such request shall be deemed a letter of intent. No certificate of need
 42 application shall be considered submitted to the department unless a
 43 current letter of intent, specific to the proposal and in accordance with
 44 the provisions of this subsection, has been on file with the department
 45 for not less than ten business days. For purposes of this subsection, "a
 46 current letter of intent" means a letter of intent on file with the
 47 department for not more than one hundred eighty days. A certificate

48 of need application shall be deemed withdrawn by the department, if a
49 department completeness letter is not responded to within one
50 hundred eighty days. The Office of the Long-Term Care Ombudsman
51 shall be notified by the facility at the same time as the letter of intent is
52 submitted to the department.

53 (d) Any facility acting pursuant to subdivision (3) of subsection (b)
54 of this section shall provide written notice, at the same time it submits
55 its letter of intent, to all patients, guardians or conservators, if any, or
56 legally liable relatives or other responsible parties, if known, and shall
57 post such notice in a conspicuous location at the facility. The notice
58 shall state the following: [(A)] (1) The projected date the facility will be
59 submitting its certificate of need application, [(B)] (2) that only the
60 department has the authority to either grant, modify or deny the
61 application, [(C)] (3) that the department has up to ninety days to
62 grant, modify or deny the certificate of need application, [(D)] (4) a
63 brief description of the reason or reasons for submitting a request for
64 permission, [(E)] (5) that no patient shall be involuntarily transferred
65 or discharged within or from a facility pursuant to state and federal
66 law because of the filing of the certificate of need application, [(F)] (6)
67 that all patients have a right to appeal any proposed transfer or
68 discharge, and [(G)] (7) the name, mailing address and telephone
69 number of the Office of the Long-Term Care Ombudsman and local
70 legal aid office.

71 (e) The department shall review a request made pursuant to
72 subsection (b) of this section to the extent it deems necessary,
73 including, but not limited to, in the case of a proposed transfer of
74 ownership or control, [prior to initial licensure,] the financial viability
75 of the applicant, the impact on the facility rate and the financial
76 condition of the applicant, the financial responsibility and business
77 interests of the transferee and the ability of the facility to continue to
78 provide needed services, or in the case of the addition or expansion of
79 a function or service, ascertaining the availability of the function or
80 service at other facilities within the area to be served, the need for the

81 service or function within the area and any other factors the
82 department deems relevant to a determination of whether the facility
83 is justified in adding or expanding the function or service. The
84 commissioner shall grant, modify or deny the request within ninety
85 days of receipt thereof, except as otherwise provided in this section.
86 Upon the request of the applicant, the review period may be extended
87 for an additional fifteen days if the department has requested
88 additional information subsequent to the commencement of the
89 commissioner's review period. The director of the office of certificate of
90 need and rate setting may extend the review period for a maximum of
91 thirty days if the applicant has not filed in a timely manner
92 information deemed necessary by the department. The applicant may
93 request and shall receive a hearing in accordance with section 4-177 if
94 aggrieved by a decision of the commissioner.

95 (f) The Commissioner of Social Services shall not approve any
96 requests for beds in residential facilities for the mentally retarded
97 which are licensed pursuant to section 17a-227 of the 2008 supplement
98 to the general statutes and are certified to participate in the Title XIX
99 Medicaid Program as intermediate care facilities for the mentally
100 retarded, except those beds necessary to implement the residential
101 placement goals of the Department of Developmental Services which
102 are within available appropriations.

103 (g) The Commissioner of Social Services shall adopt regulations, in
104 accordance with chapter 54, to implement the provisions of this
105 section. The commissioner shall implement the standards and
106 procedures of the Office of Health Care Access concerning certificates
107 of need established pursuant to section 19a-643, as appropriate for the
108 purposes of this section, until the time final regulations are adopted in
109 accordance with said chapter 54.

110 Sec. 2. Section 19a-491a of the general statutes is amended by adding
111 subsection (d) as follows (*Effective from passage*):

112 (NEW) (d) On and after July 1, 2008, the Commissioner of Public

113 Health shall issue or renew a nursing home license only if the
114 applicant establishes that a single entity owns both the nursing home
115 business and the real estate on which the nursing home is located,
116 except that the commissioner may issue or renew such license if the
117 commissioner, in consultation with the Commissioner of Social
118 Services, finds that such license is necessary to protect the health and
119 safety of nursing home residents.

120 Sec. 3. Section 19a-546 of the general statutes is repealed and the
121 following is substituted in lieu thereof (*Effective from passage*):

122 (a) A receiver may not be required to honor any lease, mortgage,
123 secured transaction or other contract entered into by the owner of the
124 facility if, upon application to the Superior Court, said court
125 determines that: (1) The person seeking payment under the agreement
126 was an owner or controlling stockholder of the facility or was an
127 affiliate of such owner or controlling stockholder at the time the
128 agreement was made; or (2) the rental, price or rate of interest required
129 to be paid under the agreement was substantially in excess of a
130 reasonable rental, price or rate of interest at the time the contract was
131 entered into.

132 (b) If the receiver is in possession of real estate or goods subject to a
133 lease, mortgage or security interest [which] that the receiver is
134 permitted to avoid under subsection (a) of this section and if the real
135 estate or goods are necessary for the continued operation of the facility
136 under this section, the receiver may apply to the court to set a
137 reasonable rental, price or rate of interest to be paid by the receiver
138 during the duration of the receivership. No allowance for such
139 property costs set by the court shall exceed the fair rental value
140 allowance determined pursuant to the regulations adopted pursuant to
141 section 17b-238. The court shall hold a hearing not later than fifteen
142 days after application is made. Any known owners of the property
143 involved shall receive notice of such application from the receiver at
144 least ten days prior to the hearing. Payment by the receiver of the

145 amount determined by the court to be reasonable is a defense to any
 146 action against the receiver for payment or for possession of the goods
 147 or real estate subject to the lease, security interest or mortgage
 148 involved by any person who received such notice, but the payment
 149 does not relieve the owner of the facility of any liability for the
 150 difference between the amount paid by the receiver and the amount
 151 due under such lease, security interest or mortgage involved.

152 (c) The provisions of this section shall not apply to a lease,
 153 mortgage, secured transaction or other contract entered into with any
 154 financial institution regulated by a state or federal agency.

155 Sec. 4. Section 17b-339 of the general statutes is repealed and the
 156 following is substituted in lieu thereof (*Effective from passage*):

157 (a) There is established a Nursing Home Financial Advisory
 158 Committee to examine the financial solvency of nursing homes on an
 159 ongoing basis and to support the Departments of Social Services and
 160 Public Health in their mission to provide oversight to the nursing
 161 home industry [which promotes] on issues concerning the financial
 162 solvency of and quality of care provided by nursing homes. The
 163 committee shall consist of [seven members: The] the Commissioner of
 164 Social Services, or his designee; the Commissioner of Public Health, or
 165 his designee; the Secretary of the Office of Policy and Management, or
 166 his designee; [the director of the Office of Fiscal Analysis, or his
 167 designee;] and the executive director of the Connecticut Health and
 168 Education Facilities Authority, or his designee; [; and one
 169 representative of nonprofit nursing homes and one representative of
 170 for-profit nursing homes appointed by the Governor.

171 (b)] The Commissioner of Social Services and the Commissioner of
 172 Public Health shall be the chairpersons of the committee. [Any vacancy
 173 shall be filled by the appointing authority.]

174 [(c)] (b) The committee, upon receipt of a report relative to the
 175 financial solvency of and quality of care provided by nursing homes in

176 the state, shall recommend appropriate action [for improving the
177 financial condition of any nursing home that is in financial distress] to
178 the Commissioner of Social Services and the Commissioner of Public
179 Health.

180 [(d)] (c) Not later than January 1, [1999] 2010, and annually
181 thereafter, the committee shall submit a report on its activities to the
182 joint standing committees of the General Assembly having cognizance
183 of matters relating to appropriations, human services and public health
184 and to the select committee of the General Assembly having
185 cognizance of matters relating to aging, in accordance with the
186 provisions of section 11-4a.

187 Sec. 5. (NEW) (*Effective from passage*) (a) Each nursing home facility,
188 as defined in section 19a-521 of the general statutes, shall submit a
189 quarterly report of accounts payable by vendor and by days
190 outstanding to the Commissioner of Social Services in a format
191 prescribed by the commissioner. If such reports indicate a facility may
192 be experiencing financial distress, the commissioner shall require the
193 nursing home facility to submit annual audited financial statements
194 and may require a nursing home facility to report specific financial
195 information, including, but not limited to, debt agreements and
196 interim financial statements. In the case of a nursing home facility that
197 is owned or managed by an entity that owns or manages multiple
198 nursing home facilities, the commissioner may require the entity to
199 report information concerning the financial condition of any such
200 nursing home facility in a format prescribed by the commissioner.

201 (b) If the Commissioner of Social Services determines, based on a
202 review of the information provided pursuant to subsection (a) of this
203 section, that a nursing home facility has undergone an adverse change
204 in financial condition, the commissioner shall notify the Commissioner
205 of Public Health and shall require the nursing home facility to report
206 monthly its cash availability and the status of vendor payments and
207 employee payrolls. The Commissioner of Social Services may require

208 the reporting of other financial information to assist in measuring the
209 financial condition of the nursing home facility.

210 (c) The criteria to be used by the Commissioner of Social Services
211 pursuant to subsection (b) of this section to determine whether a
212 nursing home facility has undergone an adverse change in financial
213 condition shall include, but not be limited to, (1) the frequency of
214 Medicaid advances granted in accordance with section 119 of public
215 act 07-1 of the June special session; (2) unfavorable working capital
216 ratios of assets to liabilities; (3) a high proportion of accounts
217 receivable more than ninety days old; (4) a high proportion of accounts
218 payable more than ninety days old; (5) significant increases in accounts
219 payable, unpaid state or municipal taxes, state user fees or payroll-
220 related costs; (6) minimal equity or reserves or decreasing equity or
221 reserves; (7) high levels of debt and high borrowing costs; (8)
222 significant increases in the level of debts and borrowing costs; and (9)
223 significant operating losses for two or more consecutive years.

224 (d) If the Commissioner of Social Services determines that a nursing
225 home facility is in financial distress that may lead to the facility having
226 insufficient resources to meet its operating costs, the commissioner
227 shall issue a report of such findings to the Nursing Home Financial
228 Advisory Committee, established pursuant to section 17b-339 of the
229 general statutes, as amended by this act.

230 Sec. 6. (NEW) (*Effective from passage*) Each entity that manages
231 nursing home facilities for which rates paid by the state are set
232 pursuant to section 17b-340 of the 2008 supplement to the general
233 statutes shall annually report its costs to the Commissioner of Social
234 Services on a form prescribed by the commissioner. Costs shall be
235 reported on a fiscal year basis ending on the thirtieth day of September
236 and submitted on or before the thirty-first day of December.

237 Sec. 7. (NEW) (*Effective from passage*) The Commissioner of Social
238 Services, in consultation with the Banking Commissioner and the
239 executive director of the Connecticut Health and Educational Facilities

240 Authority, shall establish reasonable rates of indebtedness for chronic
 241 and convalescent nursing homes and rest homes with nursing
 242 supervision. No chronic and convalescent nursing home or rest home
 243 with nursing supervision licensed in this state, or any related owner of
 244 the property of any such home, shall increase its indebtedness beyond
 245 the amount established pursuant to this section or increase its real
 246 property lease payments without the permission of the Commissioner
 247 of Social Services. A request for such permission shall be made in a
 248 manner prescribed by the commissioner. The commissioner may
 249 request information as necessary to evaluate the request and shall
 250 approve, deny or modify the request not later than sixty days after
 251 submission of any such requested information.

252 Sec. 8. Section 19a-543 of the general statutes is repealed and the
 253 following is substituted in lieu thereof (*Effective from passage*):

254 The court shall grant an application for the appointment of a
 255 receiver for a nursing home facility upon a finding of any of the
 256 following: (1) Such facility is operating without a license issued
 257 pursuant to this chapter or such facility's license has been suspended
 258 or revoked pursuant to section 19a-494; (2) such facility intends to
 259 close and adequate arrangements for relocation of its residents have
 260 not been made at least thirty days prior to closing; (3) such facility has
 261 sustained a serious financial loss or failure which jeopardizes the
 262 health, safety and welfare of the patients or there is a reasonable
 263 likelihood of such loss or failure; (4) such facility has made
 264 inappropriate use of state or federal funds that may jeopardize the
 265 financial solvency of the facility, as determined by the Commissioner
 266 of Social Services; or [(4)] (5) there exists in such facility a condition in
 267 substantial violation of the Public Health Code, or any other applicable
 268 state statutes, or Title XVIII or XIX of the federal Social Security Act, 42
 269 USC 301, as amended, or any regulation adopted pursuant to such
 270 state or federal laws.

271 Sec. 9. Subdivision (1) of subsection (b) of section 19a-493 of the

272 general statutes is repealed and the following is substituted in lieu
273 thereof (*Effective from passage*):

274 (b) (1) A nursing home license may be renewed biennially after (A)
275 an unscheduled inspection conducted by the department, (B)
276 submission of the information required by subsections (a), [and] (c)
277 and (d) of section 19a-491a, as amended by this act, and any other
278 information required by the commissioner pursuant to subsection (b)
279 of said section, and (C) submission of evidence satisfactory to the
280 department that the nursing home is in compliance with the provisions
281 of this chapter, the Public Health Code and licensing regulations.

282 Sec. 10. Section 17b-4 of the general statutes is repealed and the
283 following is substituted in lieu thereof (*Effective from passage*):

284 (a) The Department of Social Services shall plan, develop,
285 administer, operate, evaluate and provide funding for services for
286 individuals and families served by the department who are in need of
287 personal or economic development. In cooperation with other social
288 service agencies and organizations, including community-based
289 agencies, the department shall work to develop and fund prevention,
290 intervention and treatment services for individuals and families. The
291 department shall: (1) Provide appropriate services to individuals and
292 families as needed through direct social work services rendered by the
293 department and contracted services from community-based
294 organizations funded by the department; (2) collect, interpret and
295 publish statistics relating to individuals and families serviced by the
296 department; (3) monitor, evaluate and review any program or service
297 which is developed, operated or funded by the department; (4)
298 supervise the establishment of pilot programs funded by the
299 department in local communities which assist and support individuals
300 and families in personal and economic development; (5) improve the
301 quality of services provided, operated and funded by the department
302 and increase the competency of its staff relative to the provision of
303 effective social services by establishing and supporting ongoing staff

304 development and training; and (6) encourage citizen participation in
305 the development of social service priorities and programs.

306 (b) The Department of Social Services shall study continuously the
307 conditions and needs of elderly and aging persons in this state in
308 relation to nutrition, transportation, home-care, housing, income,
309 employment, health, recreation and other matters. It shall be
310 responsible in cooperation with federal, state, local and area planning
311 agencies on aging for the overall planning, development and
312 administration of a comprehensive and integrated social service
313 delivery system for elderly persons and the aged. The department
314 shall: (1) Measure the need for services; (2) survey methods of
315 administration of programs for service delivery; (3) provide for
316 periodic evaluations of social services; (4) maintain technical,
317 information, consultation and referral services in cooperation with
318 other state agencies to local and area public and private agencies to the
319 fullest extent possible; (5) develop and coordinate educational
320 outreach programs for the purposes of informing the public and
321 elderly persons of available programs; (6) cooperate in the
322 development of performance standards for licensing of residential and
323 medical facilities with appropriate state agencies; (7) supervise the
324 establishment, in selected areas and local communities of the state, of
325 pilot programs for elderly persons; (8) coordinate with the Department
326 of Transportation to provide adequate transportation services related
327 to the needs of elderly persons; and (9) cooperate with other state
328 agencies to provide adequate and alternate housing for elderly
329 persons, including congregate housing, as defined in section 8-119e.

330 [(c) The Department of Social Services, in conjunction with the
331 Department of Public Health, may adopt regulations in accordance
332 with the provisions of chapter 54 to establish requirements with
333 respect to the submission of reports concerning financial solvency and
334 quality of care by nursing homes for the purpose of determining the
335 financial viability of such homes, identifying homes that appear to be
336 experiencing financial distress and examining the underlying reasons

337 for such distress. Such reports shall be submitted to the Nursing Home
338 Financial Advisory Committee established under section 17b-339.]

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	17b-352
Sec. 2	<i>from passage</i>	19a-491a
Sec. 3	<i>from passage</i>	19a-546
Sec. 4	<i>from passage</i>	17b-339
Sec. 5	<i>from passage</i>	New section
Sec. 6	<i>from passage</i>	New section
Sec. 7	<i>from passage</i>	New section
Sec. 8	<i>from passage</i>	19a-543
Sec. 9	<i>from passage</i>	19a-493(b)(1)
Sec. 10	<i>from passage</i>	17b-4

Statement of Purpose:

To implement the Governor's budget recommendations.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]